

ESTTA Tracking number: **ESTTA680843**

Filing date: **06/30/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91222051
Party	Defendant It's a 10, Inc.
Correspondence Address	MERRY L. BIGGERSTAFF TIAJOLOFF & KELLY LLP 405 LEXINGTON AVE NEW YORK, NY 10174-0002 mbiggerstaff@tkiplaw.com
Submission	Answer
Filer's Name	Merry L. Biggerstaff
Filer's e-mail	mbiggerstaff@tkiplaw.com
Signature	/Merry L. Biggerstaff/
Date	06/30/2015
Attachments	Answer Notice of Opposition_6.30.15.pdf(93246 bytes)

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 and accordingly denies the same.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and accordingly denies the same.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 with respect to Opposer's sales and the quality of its products and accordingly denies the same. Applicant denies the remaining allegations.
4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 and accordingly denies the same.
5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 and accordingly denies the same.
6. Applicant denies the allegations in Paragraph 6.

7. Applicant denies the allegations in Paragraph 7.
8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 and accordingly denies the same.
9. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 and accordingly denies the same.
10. Applicant denies the allegations in Paragraph 10.
11. Applicant admits the allegations contained in Paragraph 11.
12. Applicant admits the allegations contained in Paragraph 12.
13. Applicant admits the allegations contained in Paragraph 13.
14. Applicant denies the allegations contained in Paragraph 14.
15. To the extent the allegations in this paragraph 17 are Opposer's legal conclusions, no answer is required. With respect to the remaining allegations, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and accordingly denies the same.
16. Applicant repeats and re-alleges each and every response and denial above as if fully set forth herein.
17. To the extent the allegations in this paragraph 17 are Opposer's legal conclusions, no answer is required.
18. Applicant denies the allegations in Paragraph 18.
19. Applicant denies the allegations in Paragraph 19.
20. Applicant denies the allegations in Paragraph 20.
21. Applicant denies the allegations in Paragraph 21.
22. Applicant denies the allegations in Paragraph 22.

FIRST AFFIRMATIVE DEFENSE

23. Opposer fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

24. Opposer's MIRACLE WHIPPED mark is not famous. There is no likelihood of dilution because Opposer cannot meet the stringent standards for fame under 15 U.S.C.S. §1125(c). A large segment of the population, including the younger target audience for Applicant's goods, are not aware of Opposer's products sold under its mark MIRACLE WHIPPED.

THIRD AFFIRMATIVE DEFENSE

25. Applicant is the owner of 29 valid and subsisting federal trademark registrations for marks substantially the same as the mark at issue in this matter and for the same goods, namely, trademarks comprised of the term MIRACLE for hair care products.

FOURTH AFFIRMATIVE DEFENSE

26. The term "WHIP" as used in Opposer's mark is generic.

Wherefore Applicant prays that the opposition be dismissed and that the registration issue for Application Serial No. 86/346,128.

Dated: June 30, 2015

Respectfully submitted,

/Merry L. Biggerstaff/
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER TO NOTICE OF OPPOSITION has been served by delivering said copy *via* First-Class, postage prepaid mail to counsel for Petitioner as follows:

Susan H. Frohling
Kraft Foods Group Brands LLC
Three Lakes Drive
Northfield, IL
60093

Dated: June 30, 2015

/Merry L. Biggerstaff/
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